

Summary of Comments on “Marine Protected Areas in Alaska: Recommendations for a Public Process”



Compiled by
Doug Woodby

October 14, 2002

**Summary of Comments on
“Marine Protected Areas in Alaska:
Recommendations for a Public Process”**



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Doug Woodby

Regional Information Report¹ No. 5J02-09

Alaska Department of Fish and Game
Division of Commercial Fisheries
P.O. Box 25526
Juneau, Alaska 99802-5526

October 14, 2002

¹ The Regional Information Report Series was established in 1987 to provide an information access system for all unpublished divisional reports. These reports frequently serve diverse ad hoc informational purposes or archive basic uninterpreted data. To accommodate timely reporting of recently collected information, reports in this series undergo only limited internal review and may contain preliminary data; this information may be subsequently finalized and published in the formal literature. Consequently, these reports should not be cited without prior approval of the author or the Division of Commercial Fisheries.

Summary of Comments On “Marine Protected Areas in Alaska: Recommendations for a Public Process”

This document summarizes the main points of 27 written responses to a request for comments on “Marine Protected Areas in Alaska: Recommendations for a Public Process,” which was published by the Alaska Department of Fish and Game in July, 2002¹. Comments were due by October 2, 2002. The written responses came from a variety of individuals, agencies, and organizations (Table 1), and together, represent a broad spectrum of viewpoints. The comments are generally very thoughtful and constructively critical, and demonstrate a high degree of interest and commitment to responsible marine resource management in Alaska. The Alaska Department of Fish and Game conveys these comments to the Board of Fisheries with the expectation that the comments will be valuable to the Board in dealing with marine protected area issues.

Table 1. List of individuals, agencies, and organizations providing written responses.

Number	Comment Source
1	Alaska - Division of Governmental Coordination
2	Alaska Dept. of Law
3	Alaska Dept. of Natural Resources
4	Alaska Forest Association, Inc.
5	Alaska Marine Conservation Council
6	Brower, Gordon
7	Bunker, Don N.
8	Central Council Tlingit and Haida Indian Tribes of Alaska
9	Chugach Alaska Corporation
10	Conservation Fund
11	Cook Inlet Keeper
12	Cummings, Terry
13	Defenders of Wildlife
14	Glacier Bay National Park and Preserve
15	Juneau Douglas F&G Advisory Committee
16	Kandianis, Teresa
17	Marine Conservation Alliance
18	NANA Regional Corporation, Inc.
19	Native Village of Eyak Traditional Council
20	Ocean Conservancy
21	Resource Development Council
22	Scholz, Astrid
23	Sloane, Scott - ADF&G, Commercial Fisheries Div., Region I
24	Southeast Alaska Fishermen's Alliance
25	Taylor, Robin L., Senator
26	Ugoretz, John - California DFG
27	Wainwright, Nancy S.

¹ ADF&G. 2002. Marine Protected Areas in Alaska: Recommendations for a Public Process. Regional Information Report 5J02-08. Alaska Dept. of Fish and Game, Juneau.

1. Alaska Division of Governmental Coordination (DGC).
 - a. The definition of marine protected areas is too broad and terms used require further definition.
 - b. Clarify coordination with other agencies, especially Alaska Coastal Zone Management Program as coordinated by DGC, and clarify areas included.
2. Alaska Dept. of Law
 - a. Report reflects a legally sound approach.
 - b. Clarification of how the Board might best work with the Legislature to have a reserve designated.
 - c. MPAs that only restrict fishing probably do not need legislative approval.
 - d. Policy and/or MPA proposals should specify how MPAs are to be modified in the future.
3. Alaska Dept. of Natural Resources
 - a. Questions why the report deals with authorities not involving fisheries.
 - b. Alaska's response to the federal MPA initiative should be a global state process and not specifically focused on fisheries.
 - c. Not clear why state parks and Areas Meriting Special Attention are included in the inventory as these do not restrict fishing.
4. Alaska Forest Association, Inc.

Asks for clarification on impact of the MPA program on the timber industry.
5. Alaska Marine Conservation Council
 - a. Proposes revised definitions for MPAs.
 - b. Supports rockfish reserves in the Gulf and Aleutian Islands.
 - c. Supports full involvement of stakeholders in process and adoption of a clear policy with adequate timeframe.
 - d. Supports a needs analysis, and conservation measures combining an incremental approach and a long-term goal if creating a system of reserves (p. 6).
 - e. Protection of sensitive marine habitats must include stakeholder input, even if there is a need for expedited review.
 - f. Supports full involvement of stakeholders in reserve design, including site selection.
 - g. Supports development of management plans.
 - h. Stresses need to involve tribal organizations in planning.
 - i. The inventory has areas listed that do not provide sufficient, year round protection to qualify under the federal definition for MPAs. Those areas are better termed Marine Managed Areas. A list of 6 areas left out is included, and

an error in the boundary of the no trawl area of the eastern Gulf of Alaska is noted.

6. Brower, Gordon

Describes need for offshore protected areas for anadromous fish to protect subsistence needs.

7. Bunker, Don N.

- a. Opposes creation of more MPAs. Management is sufficiently conservative as is.
- b. Additional fishing restrictions will result in loss of jobs and negative impacts on economically depressed area of the state.

8. Central Council Tlingit and Haida Indian Tribes of Alaska

Incorporate language specifically calling for coordination with federally recognized tribes of Alaska, and lists sections of report where to do this. This would be in accordance with the “Millennium Agreement” and with Board policy.

9. Chugach Alaska Corporation

- a. MPA designations could impair Chugach’s plans for economic development. Chugach and other ANSCA corporations should be involved in the public process early, given their need for access to tidelands and for subsistence use of marine waters.
- b. Scientific basis for establishment of MPAs in Alaska should come from the North Pacific, not elsewhere, and should be in place before MPAs are designated.
- c. Fears that nominations will be based not on science but on wish lists of environmental group’s intent on closing Alaska to commercial use.
- d. The MPA inventory doesn’t include EFH or HAPCs of federal program. How much is currently protected, and how will the state and federal designations relate?
- e. Funding should be secured to support the scientific and management planning processes.

10. The Conservation Fund

- a. Requests that a letter by the author and Dr. S. Earle in the Anchorage Daily News (8 June 1999) be included in comment record. The main points of that letter are:
 - i. Alaska has a rich marine realm that drives Alaska’s ecology and economy.
 - ii. The majority of Alaska’s conservation problems are in Alaska’s oceans, which in contrast to the land, has few protected habitats.

- iii. A network of marine reserves should be designed by top scientists, beginning with existing protected areas, based on an identification of essential fish habitat in state waters, and given formal protection for conservation values.
- b. Ocean reserves should be considered on larger scales than mentioned in the report.
- c. Long-term benefits of an expansive marine conservation system will far outstrip short-term losses of those displaced.
- d. Marine reserves are needed to provide places where ocean life can proceed without the dominating and manipulating influences of humanity; rationale of enhancing commercial fisheries is too limited.

11. Cook Inlet Keeper

- a. Supports MPAs to better protect uses of marine resources.
- b. Pollution controls and coastal habitat protection should be included as important issues in the MPA program (in addition to fishery issues).

12. Cummings, Terry

Favors setting up MPAs in Alaska to safeguard plants and animals for generations to come.

13. Defenders of Wildlife

- a. The report is too heavily focused on use of MPAs for protecting fisheries.
- b. The MPA plan should be revised to address the broad spectrum of MPA purposes, and should use the California Marine Life Protection Act goals (list provided) as a foundation for the Alaska MPA process.
- c. Plan revision must be accompanied by additional opportunities for stakeholder input.

14. Glacier Bay National Park and Preserve

- a. Supports efforts to investigate and establish MPAs in Alaska.
- b. Consumptive interests should not exert undue influence in the MPA process.
- c. Ability to revoke reserve status and habitat protections defeats the MPA purpose and may undermine the entire process.
- d. The NPA is concerned about habitat impacts of scallop dredging west of the coastline between Icy Point and Cape Fairweather.
- e. Suggests a 1-2 year proposal review cycle, instead of 3 year, but recognizes benefits of 3 year cycle to allow superior or better thought out proposals.
- f. Experimental control closures should not be too small.
- g. Suggests a target date (e.g., 5-10 years) and revision schedule be established for management plans.
- h. Provides further citations on genetic issues.

- i. Information as presented on cost estimates for the Glacier Bay compensation package is misleading.

15. Juneau Douglas Fish and Game Advisory Committee

- a. Recommends reformatting and rewording the definitions for MPAs
- b. Recommends that the public process include local Alaskan residents, advisory committees, and local stakeholders, and not allow outside environmental interests to dominate the process.
- c. Recommends that any proposed policy and decisions coming from the Board work session be provided for further review and comment.

16. Kandianis, Teressa (Kodiak Fish Company)

The report is missing all information on the Alaska scallop fishery and all the areas closed to scallop fishing full and part time. Offered to comment on that information if it was to be included prior to end of comment period (those changes were not made to the report in the comment period).

17. Marine Conservation Alliance

- a. Encourages Board's careful deliberation on the MPA issue.
- b. Offers general tenets:
 - i. MPAs can serve legitimate management objectives if they are scientifically justified, have clear goals, and incorporate monitoring.
 - ii. Scientific justification should be oriented towards reducing known adverse impacts. Alaska-specific data are needed on effectiveness of MPAs.
 - iii. State and federal regulators have ample authority to designate *de facto* MPAs, and these authorities should be considered in deliberations on limiting marine area use. The North Pacific already has a substantial network of protected areas in place. No new no-take reserves should be created until MPAs are properly defined and goals identified.
 - iv. Encourages establishment of MPA guidelines with a science-driven and transparent public process as is used in current state and federal fishery management.
- c. MPA definitions need more careful delineation.
- d. Some of the goals have too narrow a habitat focus that may be misdirected.
- e. Enhancing fishery yields is a laudable goal but many MPA plans call for TAC reductions.
- f. Affected community should not be defined as just local communities.
- g. More descriptions are needed of how scientific planning will be addressed.
- h. Needs analysis should be better defined as to how decisions will be made, and by whom.
- i. Focusing on hot-spots may result in closing the best fishing grounds.
- j. Site selection decisions require greater staff and expertise than may be available to the Board.

- k. Difficult to know effect of effort shifts resulting from closures.
- l. Stability is not an acceptable goal for depressed or new fisheries.
- m. There is no clear evidence demonstrating that corals and sponges promote greater biological diversity.
- n. Management plan will need scientific guidance.
- o. Lack of funding for the MPA process is a major concern.
- p. Encourages development of monitoring and evaluation plan with independent scientists participating.
- q. Much of the literature reviewed in Appendix II on MPA benefits is not applicable, so that positive conclusions are inappropriate. The Georges Bank scallop example is fraught with experimental error and the supposed benefits of closure to scallop production could be explained by other factors.
- r. MPA models are of little value in determining potential benefits.
- s. Costs of closures should include potential effects of higher bycatch and consumer surplus effects.
- t. Percentage-based goals (e.g., 20%) for reserve size are inappropriate, but if used, should take into account current *de facto* MPAs.
- u. Reserve network concept is dependent on larval dispersion patterns, which are almost unknown for Alaska.
- v. Coverage recommendations represent extreme views of some MPA advocates, and the discussion is too sketchy and should be discarded.

18. NANA Regional Corporation, Inc.

- a. A balance is needed between resource protection and development, in order for communities to grow and maintain an economic base.
- b. NANA and other arctic organizations (listed in letter) should be actively involved in MPA decision process, especially for Northwest Alaska.
- c. NANA is concerned with how MPAs would affect NANA lands and their development, as well as affects on communities and shareholders.

19. Native Village of Eyak Traditional Council

- a. Federally recognized Tribes are conspicuously absent from the report.
- b. The role of Tribes needs to be fully recognized in the report and the process, including in Appendix D and as regards culturally important sites.
- c. A cohesive process for tribal involvement is essential and could be modeled after the British Columbia example (guiding principles are listed in the letter).

20. The Ocean Conservancy

- a. Recommendations need to be more assertive; process and task force should be formalized to make permanent and to allow time to develop an MPA network in Alaska.
- b. Suggests more clear and consistent definitions of MPA types; MPAs should be defined as those with year-round protection, as in the federal definition.

- c. The focus of the report should be broadened beyond fisheries management to address other MPA issues so as to include greater stakeholder involvement, or, the report title should be changed.
- d. Numerous other specific comments, only a few summarized here:
 - i. Table proposals (e.g., #402) should be allowed to move forward.
 - ii. MPA task force should become the MPA review committee, and proposals should be allowed each year.
 - iii. Experts as well as stakeholders should be involved in the process, especially when there are biological objectives.
 - iv. Timely and expedient action is needed.
 - v. The needs analysis should be applied to all stocks with identifiable spawning and nursery areas, to all stocks with uncertain assessments, and to all stocks with uncertainties or difficulties in controlling exploitation rates.
 - vi. Needs analysis should prioritize the resources, habitats and ecosystems based on need for remediation and/or protection.
 - vii. Several suggestions on reserve site selection: threshold ecological criteria need clarification; reserves may improve social and economic stability, but may not be realized in the short-term; site selection should have a more objective basis than social and political acceptability.
 - viii. Reduction of fishing mortality is the most basic factor for generating benefits within reserves, and these benefits are highly likely for classes of fish or invertebrates with similar life histories (tropical relative to Alaskan).

21. Resource Development Council

- a. Uncomfortable with prospects for increasing the state's regulatory regime without identifying a clear need.
- b. What specific management need will a future MPA program address? The MPA task force and Board should identify this before continuing.
- c. What will be the costs to the fishing and non-fishing industries?

22. Scholz, Astrid

- a. Socioeconomic concerns are paramount with stakeholders and fishermen.
- b. It is important to obtain socioeconomic information early in the process.
- c. Socioeconomic models are now available.

23. Sloane, Scott – ADF&G, Commercial Fisheries Div., Region I

Questions remain regarding the monitoring effort: who does it, who pays for it, and who is responsible for keeping the data? Will funding be state or federal?

24. Southeast Alaska Fishermen's Alliance

- a. Clarify that marine reserves, marine fishery reserves, and protected marine habitats are subsets of MPAs, and that the latter 2 can be created by the Board, but marine reserves require legislative designation.
- b. Marine reserves are to be determined by local Alaskans and not outside interests. Local fish and game advisory committees could be the only vehicle for submitting proposals for marine reserves.
- c. Objects to relying on models developed elsewhere.
- d. Provide many opportunities for comment; do not rush the process.

25. Taylor, Senator Robin L.

- a. The board and the department appear to be extending their jurisdiction beyond constitutional and legislative authority.
- b. The board and the department should reconsider the MPA effort and re-prioritize the focus to solutions for an economically distressed commercial fishing industry.

26. Ugoretz, John – California Dept. of Fish & Game

- a. Provides edits on the review of the California MPA process.
- b. Questions the cited criticisms of the Merritt Island (Florida) study, suggesting that those criticisms were incorrect.
- c. Suggests looking at economic cost data for the Tortugas reserve (Florida), which were not as high as expected.

27. Wainwright, Nancy S.

- a. Suggests identifying predominant interests and impacts to marine resources in each geographic region of the state to facilitate creation of MPAs.
- b. Gives example of oil and gas on North Slope, and the relationship between discharges and/or diversion of river flow and fish migration.
- c. Suggests that tribal governments should be involved early in this process.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

*OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF GOVERNMENTAL COORDINATION*



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October 7, 2002

MPA Task Force
Attention: Doug Woodby
Alaska Department of Fish and Game
Commercial Fisheries Division
P.O. Box 25526
Juneau, AK 99801

Dear Mr. Woodby:

Re: Marine Protected Areas in Alaska: Recommendations for a Public Process

Thank you for the opportunity to comment on the Report to the Alaska Board of Fisheries (Regional Information Report 5J02-08) regarding Marine Protected Areas in Alaska: Recommendations for a Public Process. The Division of Governmental Coordination (DGC) applauds the Department of Fish and Game for initiating and proposing the recommendations, and recognizes the substantial amount of work that has gone into the report.

The DGC has reviewed the report within the context of the Alaska Coastal Management Program (ACMP), and within the context of the statewide Marine Protected Area project DGC is tasked with. The DGC offers the following comments for your consideration.

Marine Protected Area definition

Within the purpose of this report, the recommendation, and the context of the Board of Fisheries authorities, the proposed definition of "marine protected areas" seems overly broad (page 4). In addition to the broad definition, several key terms within that definition remain undefined, including "special protections," "enhance," and the term "marine" in the title. Without providing further definition

or explanation of these key terms, the application and reach of the MPA effort is unclear.

Coordination other State Agencies

Recognizing the importance of this effort to the Department of Fish and Game and the Board of Fisheries, and the goal of protecting sensitive and important marine habitats, early consultation and coordination with other state agencies exercising authorities of the potential MPA's is paramount to the effort's success.

It is noted that many of the "potential" MPA's included in the report are coastal resource districts participating in the Alaska Coastal Management Program (ACMP). However, the administrating agency for the ACMP, the Division of Governmental Coordination, is not listed with the other state agencies identified under the coordination section (page 8). Also, it is not clear whether the report is incorporating the Alaska Coastal Management Program coastal resource districts and areas meriting special attention (page 71, page 74, and page 82).

Opportunity to Further Participate

The DGC would appreciate the opportunity to further discuss these comments, and to assist in the development of a statewide MPA effort and approach.

If you have any questions regarding these comments, please do not hesitate to contact me at (907) 465-8797, or by Email at randy_bates@gov.state.ak.us.

Sincerely,

/ s /

Randall W. Bates
Project Analyst

cc:

Kerry Howard – Acting Director, DGC
Janet Schempf – DFG
Fran Roche – DEC
Janet Burleson-Baxter – DNR

MEMORANDUM

STATE OF ALASKA

Department of Law

To: Frank Rue, Commissioner
Alaska Dep't of Fish & Game

Date: September 26, 2002

File No.: 661-02-0213

Thru: Lance B. Nelson *LBN*
Assistant Attorney General
Natural Resources – Anchorage

Tel. No.: 269-5232

Fax: 279-2834

From: Jon K. Goltz *JKG*
Assistant Attorney General
Natural Resources – Anchorage

Subject: Legal Review of Appendix D of
ADF&G Report "Marine
Protected Areas in Alaska"

This memorandum responds to your request for a legal review of Appendix D of the report "Marine Protected Areas in Alaska" published by the Alaska Department of Fish and Game (ADF&G) in July 2002. Our review leads to these conclusions: (1) the appendix reflects a legally sound approach to developing Marine Protected Areas (MPAs); (2) MPAs that create a "reserve" would require an enactment by the legislature; (3) MPAs that involve only fishing closures could be adopted by the Board without a legislative enactment; and (4) consideration should be given to how regulations governing an MPA would be modified after the MPA is created.

Because this memorandum involves analysis of the statutory authority of the Board of Fisheries, a copy is being sent to Diana Cote, Executive Director of the Board.

(1) The Report Reflects a Legally Sound Approach.

The Department of Law sees no significant errors or omissions in Appendix D of the report. The report provides a general overview of options for the development of marine protected areas, and Appendix D sets forth pertinent legal processes and authorities. This legal review, in accordance with the general nature of the report, is general in scope. It appears that the next step will be for the Department and the Board to consider a process or policy for evaluating specific MPA proposals. Further legal review will be advisable when more specific action is presented in the form of an MPA policy or specific MPA proposals.

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COMMISSIONER'S OFFICE

(2) A "Reserve" Created Under the Authority of AS 16.05.251(a)(1) Would Require an Enactment by the Legislature.

Alaska Statute 16.05.251(a)(1) says the Board of Fisheries may adopt regulations "setting apart fish reserve areas, refuges, and sanctuaries in the waters of the state over which it has jurisdiction, subject to the approval of the legislature." That language is the subject of a 1995 informal attorney general opinion that sets forth the Department of Law's recommended interpretation. 1995 Inf. Op. Att'y Gen. (Aug. 16; 663-95-0363). In that opinion, we addressed two issues that are relevant here: the area over which the Board has jurisdiction to set apart reserves,¹ and what kind of approval is needed from the legislature.

We recommended in that opinion that the reference in AS 16.05.251(a)(1) to waters over which the Board of Fisheries has jurisdiction should be interpreted to mean public lands owned by the state, and marine waters extending to the edge of the territorial sea, that is, the three-mile limit. The reason for that interpretation is that the power to set aside reserves must be limited to those areas for which the state would have authority to withdraw land from the public domain and dedicate it to a specific use.

The other relevant issue addressed in the 1995 informal opinion is what approval is needed from the legislature when setting apart a reserve under AS 16.05.251(a)(1). We concluded that the legislature must approve the reserve by enacting legislation that grants the Board specific authority to adopt the reserve, or by enacting legislation that establishes the reserve by statute. We also concluded that the statute should not be interpreted as allowing the Board to adopt a reserve that could be extinguished by a legislative veto. Essentially, the Board's authority is limited to making a recommendation to the legislature.

In light of the need for a legislative enactment under AS 16.05.251(a)(1), probably the best procedure for setting apart a reserve would be for the Board to follow normal rule-making procedures but stop short of adopting a regulation. At that point, the Board would pursue approval from the legislature in the form of some type of enactment. The current MPA report appears to have been drafted with just this type of procedure in mind. Adoption of a regulation could then proceed if the legislature authorizes the Board to adopt a regulation setting apart a reserve. If the legislature establishes the recommended reserve by statute, then no regulatory action would be necessary.

¹ In this memo, "reserves" includes sanctuaries and refuges. There is no statutory definition of those terms as they are used in AS 16.05.251(a)(1).

- (3) Some Types of MPA's Could Be Adopted By the Board Without Approval of the Legislature.

The legislative approval requirement of AS 16.05.251(a)(1) creates an important distinction between the authority to set apart a fish reserve area and the Board's more familiar authority to restrict the taking of fish generally. The authority to set apart a reserve implies a power to regulate activities other than just the taking of fish in the reserve area. A regulation that involved only restrictions on taking fish in a specific area could likely be accomplished under the Board's authority to set closed seasons, closed areas, and zero harvest levels without relying on the authority to set apart fish reserve areas, sanctuaries and refuges. Similarly, an MPA intended to protect habitat from degradation caused by fishing gear could likely be accomplished under the Board's authority to regulate fishing gear and methods.

Any regulation that relied on a grant of authority other than AS 16.05.251(a)(1) would probably not be required to have approval of the legislature before becoming effective.² Of course, any action taken by the Board must serve the purpose of conserving and developing fishery resources of the state, no matter what grant of authority supports the particular action, because that is the purpose for which the Board was created. Given the scientific basis for reserves discussed in Appendix B of the report, it seems there would be little trouble building a record that shows a reasonable basis for concluding that an MPA serves conservation and development purposes.

We recommend that a process or policy adopted for the consideration of specific MPAs include criteria for determining whether legislative approval would be necessary. The most important criterion for making that determination is whether the restrictions for the proposed MPA are limited to activities over which the Board has regulatory authority independent of AS 16.05.251(a)(1).

² It might be argued that a "no take" area is essentially a reserve, which requires approval of the legislature. That interpretation is not likely, on our analysis, because it runs contrary to the principle that each part of a statute should be interpreted to have independent meaning. Accordingly, the authority in AS 16.05.251(a)(1) to set apart a reserve should be interpreted to involve something other than the authority to close an area to fishing, which is clearly set forth at AS 16.05.251(a)(2).

(4) Consideration Should be Given to How an MPA Would be Modified.

An MPA that involved only fishing restrictions, applied only to state waters, and was not subject to legislative approval could be modified in the course of the Board's normal regulatory process. But an MPA that involved restrictions on non-fishing activities, legislative approval, and areas subject to the jurisdiction of federal and local governments, could be much more difficult to modify in response to changing circumstances. We suggest that provisions for modification be considered as part of an MPA policy or as specific MPA proposals are developed. One possibility is for the Board, each time it seeks approval for a reserve from the legislature, to ask for a grant of authority to modify the reserve subject to specific criteria and limits. That would avoid the need to seek legislative approval for minor modifications to the MPA.

(5) Conclusion.

The MPA report points to entities other than ADF&G and the Board that might have jurisdiction over an MPA. The most obvious are the North Pacific Fishery Management Council and the National Marine Fisheries Service. Appendix D of the report contains a summary of the institutional structures in place for coordination between the Board and the Council. Less obvious, but also described in Appendix D, are the agencies that have statutory authority over non-fishing activities that might be restricted in a fishing area reserve, such as activities affecting water quality, timber development, and land use in areas served by local governments. The varieties of areas and activities that could be involved in an MPA make further legal review advisable when an MPA policy or specific proposals have been developed for consideration. The Department of Law will be available to review proposals for an MPA policy or specific MPA proposals as this process moves forward.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES OFFICE OF THE COMMISSIONER

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October 2, 2002

Mr. Doug Woodby
Marine Protected Areas Task Force
Alaska Department of Fish and Game
Commercial Fisheries Division
PO Box 25526
Juneau, Alaska 99801

Re: Marine Protected Areas Report

Dear Mr. Woodby:

Thank you for the opportunity to comment on the Department of Fish and Game's (F&G) report, Marine Protected Areas in Alaska. I appreciate the work that F&G has devoted to this task. Although Department of Natural Resources (DNR) staff were not involved in the development of the report, I'd like to offer the following general observations:

First, the report and recommendations "focus on marine reserves (areas closed to fishing)...(page 1). The goal of the report appears to be a focused review of "research addressing potential benefits marine reserves might offer to fish populations and to fisheries to conserve populations and promote sustainable fishing", (page 12). In order to attain this goal, the report references several authorities that are not related to fishing, specifically ACMP, Department of Environmental Conservation (DEC) authorities and various DNR authorities. Since these authorities are not under the purview of F&G or the Board of Fish and given that the focus of the report is fishing issues, it is unclear why these references are included.

Second, it is not clear whether the report is a response to the federal Marine Protected Areas (MPA) initiative or whether it is a response to fishing issues. Alaska's response to the federal MPA initiative should be based on a global state process and not one that focuses specifically on fishing issues.

Lastly, the report recognizes over "200 individual marine protected areas in 18 categories" in Alaska (page 71). The inventory provided in the report includes areas that are closed to fishing at some level, but then broadens the scope to include some, but not all, state marine parks and some, but not all, Areas Meriting Special Attention (AMSAs) that are created through the ACMP. I'd note that the statute providing for creation of marine parks specifically calls for the continuation of lawful existing uses of resources within the parks. Similarly AMSAs are not created with fishing

Mr. Doug Woodby
October 2, 2002
Page 2

restrictions in mind. Therefore, it is unclear why these areas are included in the report. It is also unclear whether the report simply assumes that these areas are MPAs or whether they could be considered as potential MPAs.

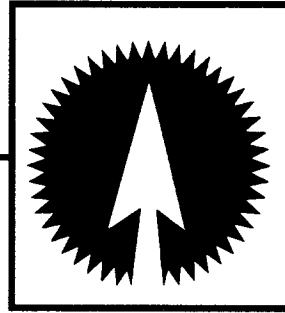
Thank you again for the opportunity to comment. DNR staff look forward to participating in Alaska's MPA effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Pat Pourchot". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

Pat Pourchot
Commissioner

Alaska Forest Association, Inc.



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October 1, 2002

MPA Task Force
Attn. Doug Woodby
Alaska Department of Fish & Game
Division of Commercial Fisheries
P.O. Box 25526
Juneau, AK 99801

Dear Mr. Woodby:

Thank you for the opportunity to comment on your Marine Protected Areas proposal. Our Association supports reasonable habitat protection practices for all the fisheries; but, I cannot determine from the July 2002 Report to the Alaska Board of Fisheries if the proposal is reasonable, if it is necessary, or if there are alternative methods of achieving the same objective that might be less problematic. I also cannot determine how problematic the proposal will be for our timber industry. For instance:

- What will be the impact upon log transfer and storage operations around Alaska?
- What will be the impact on log raft towing operations?
- What will be the impact on camp barges, equipment barges and log barge activities?
- What will be the impact if any upon adjacent uplands activities?
- What will this program cost the State?

Please provide some more detailed information for us to study and consider before you go forward with this project. The last thing Alaska needs is another redundant layer of bureaucracy.

Sincerely,

Owen J. Graham
Executive Director



Alaska Marine Conservation Council

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September 27, 2002

MPA Task Force
ATTN: Doug Woodby
Alaska Department of Fish and Game
Commercial Fisheries Division
P.O. Box 25526
Juneau, AK 99801

RE: Marine Protected Areas in Alaska

Dear Dr. Doug Woodby:

The Alaska Marine Conservation Council (AMCC) welcomes this opportunity to comment on the ADF&G report, "Marine Protected Areas in Alaska: Recommendations for a Public Process". It is clear that the MPA task force put a great amount of effort into preparing this document. AMCC appreciates the considerable work done by the MPA task force and that the ideas presented include goals for marine reserves in Alaska, scientific criteria for reserve site selection, and a process for public participation.

The state of Alaska is at a defining point in fisheries management as it considers using these new management tools, allowing for an integrated approach to conserving marine resources. Marine protected areas are becoming a well-documented tool for addressing declines in productivity, biological diversity and habitat damage. Over the past few years, many studies have examined the effectiveness of marine reserves; some of these studies were reviewed in the state MPA report. Many leading scientists support the use of marine reserves as a tool for managing the marine environment, as evident by the numerous scientific consensus statements and reports on the beneficial values of marine reserves¹.

I. Redefine terminology for Marine Protected Areas and Marine Reserves

AMCC's primary concern with this report is the complicated definitions that ambiguously intertwine marine reserves and marine protected areas, when in fact there is a clear distinction. The confusion is perpetuated throughout the report, making it unclear to the reader if the authors

¹ Such as: National Center for Ecological Analysis 2000. Scientific Consensus Statement on Marine Reserves and Marine Reserves and Marine Protected Areas.

NRC. 2001. Marine Protected Areas: tools for sustaining ocean ecosystems. Washington D.C., National Academy Press. 272p.

are discussing marine protected areas, marine reserves, marine fishery reserves or protected marine habitats. Public acceptance and understanding of these definitions is critical for the proposed process to succeed.

State MPA Paper Definitions:

1. Marine protected area (MPA) - a geographically defined area designated with special protections to enhance the management of marine resources. MPAs include the following three types:
2. Marine reserve - a geographically defined area where extraction of living resources and disturbance or destruction of habitats is prohibited.
3. Marine fishery reserve - a geographically defined area may be identified as a marine fishery reserve where extraction of specified fishery resources is prohibited. These should be named for the protected resource, e.g., rockfish reserve for a rockfish closure area. To date, the Board of Fisheries routinely designates closures of this type for single species; this designation would also apply to multiple species.
4. Protected marine habitat - a geographically defined area where habitat disturbance, including use of bottom contact fishing gear of specified types is prohibited.
5. Alaskan waters - those marine waters of Alaska including waters under the jurisdiction within 3 nautical miles of shore and those under federal jurisdiction out to 200 miles offshore.

Alaska Marine Conservation Council Proposed Revision:

1. Marine Protected Areas (MPA) include:
 - a. A geographically defined area with **year round** special protections where extraction of **specified fishery resources** is prohibited (For example, research control sites closed to the harvest of sea cucumbers and red sea urchins).
 - b. A geographically defined area with **year round** special protections where **habitat disturbance**, including use of bottom contact fishing gear of specified types is prohibited. (For example state water closures to bottom trawls or the Sitka Pinnacles).
2. Marine reserve - a geographically defined area where any extraction of living resources and disturbance or destruction of habitats is prohibited. Marine reserves are also referred to as "no-take zones". (For example no transit zones around Steller Sea Lion rookeries are de-facto marine reserves, yet subsistence harvest is not restricted in these areas. In waters under Alaska state jurisdiction, marine reserves must be designated by the Alaska legislature.)
3. Alaskan waters - those marine waters of Alaska including waters under state jurisdiction within 3 nautical miles of shore and those under federal jurisdiction out to 200 miles offshore.

Note: Throughout the State's paper, it should be clear what is being discussed at any one time. The terms "reserve" and "marine protected area" should not be interchangeable. This can be achieved by always referring to either MPA or MRV or MPA/MRV (if it refers to both).

Rationale for Proposed Revisions:

- There needs to be a clear distinction made between Marine Protected Area and Marine Reserve. It will be easier for the public to understand if there are just **two main categories**.
- The definition section of the paper is critical to an understanding of the issue and the paper. Definitions must be simple and absolutely clear to the public or what follows will be difficult to comprehend.
- The State's proposed definitions appear to confuse the definition of MPA and MRV. For example, as presently defined in the white paper, the Sitka Pinnacles would supposedly come under the definition of a marine fishery reserve, but they are neither a true reserve nor a no-take zone. Trolling and sport fishing are still allowed and only bottom gear is prohibited; the Sitka Pinnacles are, rather, a Marine Protected Area.
- It is confusing to create a special category for "protected marine habitat." The states "protected marine habitat" is really a marine protected area and is covered under 1(b) of the proposed revision.
- Up to 80% of marine protected areas around the world are protected in name only. The state of Alaska will be perpetuating the concept of "paper parks" by using a definition for marine protected areas that includes either seasonal protections or no protection at all.
- The proposed revisions will make it easier for the state to coordinate with the federal government's definitions under Executive Order 13158.

II. Rockfish Reserves:

The state MPA report mentions several times the potential benefits of marine protected areas for rockfish species. "Various Gulf of Alaska rockfish species may benefit from reserves because most are non-migratory as adults and have low population growth rates, making them prone to overfishing and serial depletion" (pg 19). AMCC supports the concept of creating rockfish reserves in the Gulf of Alaska and in the Aleutian Islands. We stress that reserves do not make areas outside of the reserves' boundaries a sacrifice zone and they must be implemented along with other traditional management tools.

Last year, the Alaska Board of Fisheries received proposal 402, that requested the establishment of a series of marine reserves to address localized depletions of Pelagic shelf, demersal shelf, and slope assemblages of rockfish. Due to the demonstrated concern for these species and the available science on the potential of reserves to benefit rockfish in Alaskan waters (Soh et al 2000), we feel that the State of Alaska should seriously consider this idea.

III. Comments on Process:

The Alaska Marine Conservation Council has continually stressed that the full involvement of coastal residents, fishermen, scientists, and other stakeholders should be involved in the identification, creation and management planning of marine reserves and protected areas. We

are in agreement with the recommended public process that calls for stakeholder involvement on all key elements of MPA planning.

The Board of Fisheries should adopt a clear policy for the establishment of marine protected areas. The Board should allow time for development of a comprehensive region-wide implementation program.

AMCC agrees that when evaluating marine areas for special protections, a needs analysis should be conducted. Then, when considering appropriate conservation measures, a combination of the approaches recommended by ADF&G should be used. We recommend taking “an incremental approach to provide protection to the most vulnerable and valuable areas and habitats with the highest conservation needs first” (pg 6 #2b) in conjunction with a more long-term goal of a “system of reserves and protected habitats that provides for connectivity (via larval transport or migration) and for full representation and protection of the types or marine habitats in each region of the state’s marine waters.” (Pg 6 #2d)

In regards to sensitive marine habitats, the state MPA report exclaims:

Fragile habitats that are subject to damage should receive priority for expedited review for potential designation as protected marine habitats. Eliminating use of some or all bottom contact gear types may, in some situations prevent damage to fragile marine habitats, including deep sea corals and sponges, which structurally enhance the diversity of habitats and promote greater biodiversity. (Pg 8)

While AMCC agrees with the need to protect sensitive marine habitats and a sense of urgency to do so, any “expedited review” must still include stakeholder input.

IV. Reserve Site Selection:

The criteria for reserve site selection, in conjunction with a needs analysis, appear to be appropriate for the long-term planning of a network of reserves and protected areas off the coast of Alaska. The needs analysis and the reserve site selection have many criteria. This will probably take many years, much effort and much money before any marine protected areas are implemented. AMCC stresses the importance of prioritizing known sensitive habitats. Sensitive habitats at risk to adverse human impacts may require more immediate attention.

Although this is not the sentiment expressed in the state MPA report, some managers and scientists have expressed reservations about having the public involved in reserve site selection. AMCC however, feels that *it is very important to have the full involvement of coastal residents, fishermen, scientists, and other stakeholders in reserve design*. The state MPA report adequately expresses this when stating, “It would be a mistake to assume that, just because these are scientific criteria, only scientists should be evaluating sites by the ecological criteria. ... Instead, Roberts et al. suggest that stakeholders be involved based on their knowledge of the resources and for stakeholders to be apprised of the importance of biological attributes for achieving the objectives” pg 25.

V. Management Plans for Reserves:

The state MPA report explains that management plans should be designed for marine reserves. AMCC agrees with this. Appropriate management plans should identify reserve goals and objectives and include sufficient funding for their monitoring, evaluation, and enforcement. It is unclear from the report, when discussing management plans for reserves (pg 9), if the state plans to include a community or tribal component in management. However later in the report, when reviewing case studies from other states, there is mention of the importance of community and tribal involvement at the management stage.

When discussing the state of Washington process to establish MPAs, the report states, "Perhaps most significantly, the state needs to coordinate planning and development with tribal authorities managing tribal fisheries. State and tribal co-managers are only beginning development of comprehensive, joint management goals, principles, and strategies to ensure conservation of groundfish in Puget Sound" (pg 52).

The report needs to clearly articulate that community and tribal involvement is an integral component of the management plans of marine reserves and marine protected areas. Additionally, AMCC supports allocation of the necessary state and federal funding for research on community involvement in and enforcement of marine reserves.

VI. Inventory of Marine Protected Areas in Alaska:

The state has provided an inventory of "marine protected areas" that currently exist in Alaska state and federal waters, based on the following definition:

"A marine protected area is a geographically defined area designated with special protections to enhance the management of marine resources."

Many of the areas included in the inventory do not provide sufficient protection to warrant the status of a marine protected area. Areas such as the Kachemak Bay National Estuarine Reserve carry no restrictions on human activities. The Chinook Salmon Savings areas are designed to reduce Chinook bycatch, but have to date never been closed to fishing activities. Areas that do not provide year round protection from some level of commercial activity such as fishing, oil and gas exploration, or ocean dumping are more adequately termed marine managed areas. By labeling all areas that are managed for one purpose or another as a marine protected area, the state is significantly diluting the intent of marine protected areas.

AMCC agrees with the purpose of this inventory: "to provide a comprehensive source of mapped regulatory restrictions to better inform the MPA decision making process..." (pg 71). However, we stress that it is misleading to call all the inventoried areas MPAs as was done in the report, because many of the inventoried areas do not provide lasting, year round protection for the biological and cultural resources (Executive Order 13158). Although some of these areas meet the definition of a marine protected area, there should be some evaluation of their effectiveness in meeting the objectives of their design. This evaluation should also consider any additional

benefits to the marine environment that might be afforded due to the implementation of current marine protected areas.

The ADF&G inventory is clearly only a preliminary display of managed areas. A few key areas are missing in this inventory, such as:

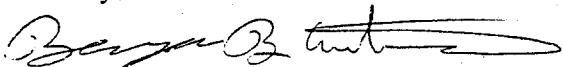
- The Pribilof Island Habitat Conservation Area: year round closure to trawling
- Kodiak Type I and II areas: year round and seasonal bottom trawl closures
- Nearshore Bristol Bay Closure Area: year round closure to trawling
- Cook Inlet Trawl Ban: year round closure to trawling
- Winter Herring Savings Area: a bycatch savings area
- C. Opilio Bycatch Limitation Zone

Last, Figure E10. "Bottom Trawl Closures in State Waters" is incorrect. The southeast Alaska bottom trawl closure (in federal waters) extends to 140° West longitude, not 144° west longitude as depicted in the map.

VII. Conclusion:

Thank you for beginning this process of establishing marine protected areas in Alaskan waters. The Alaska Marine Conservation Council looks forward to working with the state to make this program a success for communities, fishermen, and the marine ecosystem. Please be in touch if you have any questions regarding our comments.

Sincerely,



Ben Enticknap
Fisheries Project Coordinator

CC: Ed Dersham, Chair BOF
Diana Cote, Executive Director BOF

Halpern, B.S. 2002a. The impact of marine reserves: do reserves work and does size matter? *Ecol. Applic.*, in press.

Halpern, B.S. 2002b. Marine Reserves have rapid and lasting effects. *Ecology Letters*. 5: 361-366.

Soh, S., D.R. Gunderson and D.H. Ito. 2000. The potential role of marine reserves in the management of shortraker rockfish (*Sebastes borealis*) and rougheye rockfish (*S. Aleutians*) in the Gulf of Alaska. *Fisheries Bulletin*. 99: 168-179.

Subject: Marine protected areas

Date: Mon, 9 Sep 2002 10:25:57 -0800

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Federal Subsistence Advisory Council Member North Slope Region 10
Gordon Brower

I am concerned to the decline of subsistence harvested fish in rivers that we hear about in the Yukon, Kuskokwim and other rivers. A lot of concern to marine offshore activities which we believe is the problem to very low returning fish, such as over harvesting by commercial fisheries. A closer look at offshore protected habitats for life cycle recruitment of returning spawners is an area to better manage inflow of anadromous fish. Exclusion zones restricted from commercial harvesting, areas around the perimeter of river deltas and estuaries of 5 miles or more to recruit rivers of what is left over from offshore intercepts and near shore commercial harvesting. Remember the more fish get up the rivers the more fish will be produced and more fish to try to return. Subsistence fishing is an area that should be fully protected to prevent loss of traditional practices, life-safety issues to prevent hunger in economically depressed villages, which depend on a viable fish stocks to sustain traditional economic factors of villages. These should be part of a protected system over and above personnel use, sport fishing, commercial fishing and offshore whole sale capture of entire schools. With these in mind you will save our fish and rivers, you will save our people from starvation. its that important.

Gordon Brower